IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.

A.O. No. 577/2001
Old No. 628/1998

Oriental Insurance Company Ltd.
through its Divisional Manager,
Divisional Office, Railway Road,
Jwalapur, District Haridwar … Appellant.

Vs.

1- Smt. Prabha Devi W/o late Bharosa Nand
2- Km. Asha D/o late Bharosa Nand
3- Amit S/o late Bharosa Nand
Minors under the guardianship
of their natural mother Smt. Prabha Devi,
All R/o Village Shivpur Kotdwar
Garhwal .. Respondents.

Sri Prabhat Pandey, learned counsel for the appellant.
Sri Rajendra Kotiyal, learned counsel for the claimants respondents.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 173 of the Motor Vehicle Act, 1988, has been preferred by the Oriental Insurance Company, against the judgment and award dated 30-3-1998, passed by District Judge/Motor Accident Claims Tribunal, Pauri Garhwal, in MAC Case No. 74/1993, Smt. Prabha Devi and others Vs. Balbir Singh and others.

2- Brief facts of the case are that on 24.5.1993 at about 5.00 P.M. jeep bearing registration No. U.P. 06-1086 met with an accident on Lansdowne-Kotdwara road near Dhobighat. The accident took place due to the rash and negligent driving of the jeep. In the offending jeep deceased Bharosha Nand Jakhmola was travelling along with other passengers. Due to the accident the deceased Bharosa Nand Jakhmola sustained grievous injuries and he was admitted to Government Hospital Kotdwara and thereafter he was admitted in higher Center in Garh Road Meerut, where he died on 14-6-93 due to the injuries sustained by him in the accident. The claimants are the widow and children of the deceased. They filed claim petition for compensation. At the time of accident the deceased was 60 years of age and was earning Rs. 4,000/- per month.

3- The O.P./owner of the offending vehicle filed W.S. before the Tribunal and alleged that the accident did not occur due to the negligence of the driver of the jeep. There were sharp curves on the narrow road, hence the vehicle fell down in a Khud. The vehicle was insured with Oriental Insurance Company, hence the liability, if any to pay compensation, is to be borne by the insurance company.

4- The Oriental Insurance Company filed its W.S. and has asserted that the claim petition has been filed on wrong facts. The claim made by the claimants is highly exaggerated and imaginary. It was also alleged that the vehicle was over-loaded and was being driven against the conditions of insurance policy.

5- The claim Tribunal consolidated the claim petitions, arising out the instant accident, and framed following issues:-

1- Whether the accident in question took place due to rash and negligent driving of Jeep No. UP 06/1086 by its driver?.
2- Whether the driver of the jeep, who was acting as agent of the owner, committed breach of the conditions of the insurance policy? If so, its effect?.
3- To what amount of compensation, if any, the petitioner is entitled and from which of the opposite parties?.

6- Parties adduced evidence in support of their cases. The Tribunal, after having assessed the evidence on record and hearing learned counsel for the parties, decreed the claim petition for a sum of Rs. 1,50,000/- along with interest @ 18% per annum.

7- Feeling aggrieved by the impugned judgment and award the insurance company has preferred the appeal before the Allahabad High Court, which has been transferred to this court, after creation of new state for disposal.

8- Heard learned counsel for the parties and perused the record.

9- The short controversy involved in this case is as to whether the offending vehicle was having excessive passengers than the capacity of the vehicle for which the permit was granted.

10- The record of the case reveals that the offending vehicle in question was having a permit of carrying nine passengers at a time. The witnesses produced by the claimants have deposed that at the time of accident there were nine passengers in the vehicle. Thus it is clear that the vehicle was not over-loaded at the time of the accident.

11- However, it has been pleaded by the insurance company that the offending vehicle in question was carrying excessive passengers at the time of the accident. The burden lies on the shoulder of the insurance company to establish this pleading, but it reveals from the material available on the record that the insurance company has not adduced any evidence in order to show that the offending vehicle in question was carrying more than nine passengers at the time of accident. Certainly the burden to prove the breach of the conditions of the policy were violated, but there is no evidence available on the record adduced by the insurance company before the Tribunal which may suggest that the offending vehicle was carrying more than nine passengers at the time of the accident.

12- I come to the conclusion that the Tribunal has rightly decided this issue against the insurance company vide impugned judgment and award dated 30-3-1998 and I do not find any force in the argument advanced by the learned counsel for the appellant in this regard. The finding recorded by the Tribunal in this regard is liable to be confirmed.

13- Learned counsel for the appellant has invited my attention towards the rate of interest awarded by the Tribunal. It has been submitted that the rate of interest awarded by the Tribunal is highly excessive.

14- I find force in this argument. I am of the view that the Tribunal while indicating in the impugned judgment and award that the rate of interest would be 18% has certainly levied the excessive rate of interest in this case. I am of the view that the interest to be awarded in favour of the claimants should be @ 9% per annum instead 18% per annum.

15- The finding recorded by the Tribunal in this regard is liable to be modified to the extent as has been observed by me in the body of judgment.

16- With the result the appeal is partly allowed. The impugned judgment and award is modified pertaining to the aspect that the rate of interest should be 9% per annum instead of 18% per annum. Rest of the finding recorded by the Tribunal is confirmed.

(B.C. Kandpal, J.)

Dated: 14-12-2006
ISB